IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 115 of 2006
Date of decision 13. 9 .2007

Commissioner of Income Tax .. Appellant

Versus

M/s Ludhiana Steel Rolling Mills. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Sanjiv Bansal, Advocate for the appellant
Mr. Pankaj Jain, Advocate for the respondent .

M.M.Kumar, J.

The Revenue has filed the instant appeal under Section 260 A of the Income Tax Act, 1961 (for brevity 'the Act') against the order dated 29.6.2005 passed by the Income Tax Appellate Tribunal, Chandigarh Bench B, Chandigarh (for brevity 'the Tribunal') in ITA No.277/Chandi 2002 in respect of the assessment year 1998-99. It has been claimed that the following substantial question of law would arise for the determination of this Court:

> " Whether on the facts and circumstances of the case Hon'ble ITAT was correct in holding that the commission paid to Sh. Vijay Kumar Aggarwal, a close relative of Managing Director, was right as he was rendering service in lieu of commission paid? As such findings given by the Hon'ble ITAT are perverse and it is a settled law that on perversity a question of law arises"?

Brief facts of the case are that during the assessment proceedings u/s 143(3) of the Act, the Assessing Officer noticed that the assessee had paid

commission of Rs. 3,38,000/- to Shri Vijay Kumar Aggarwal, who is related to the Managing Director of the Company. The assessee was asked to justify the genuineness of the commission paid to the alleged agent. The assessee could not adduce any evidence to substantiate that Sh. Vijay Kumar Aggarwal was working as its agent. Accordingly, the Assessing Officer disallowed a sum of Rs. 3,38,000/- paid as commission to Shri Vijay Kumar Aggarwal, brother in law of managing partner of the assessee. The disallowance was made on the ground that no agreement was there to appoint him as commission agent. The Assessing Officer came to the conclusion that it was a simple device to reduce the income by diverting the same to its relatives in the shape of commission. Aggrieved by the order of the Assessing Officer, the assessee went in appeal before the Commissioner of Income Tax (A) who vide order dated 17.1.2002 deleted the addition by holding that Shri Vijay Kumar Aggarwal was rendering service in lieu of which he was paid commission and also that he was being regularly assessed in the highest tax brackets. Being not satisfied with the order dated 17.1.2002, the Revenue filed an appeal before the Tribunal who vide order dated 29.6.2005 dismissed the appeal by observing that the services rendered by Shri Vijay Kumar Aggarwal had not been doubted. The claim of the assessee was that the expenses for opening the Branch office at Mumbai would have been much more than the commission paid to Shri Vijay Kumar Aggarwal who was responsible for booking orders, collecting payments and doing misc. work for the assessee. The Tribunal further observed that since the services rendered by Shri Vijay Kumar Aggarwal had not been doubted and he had shown the income which had been taxed, therefore it cannot be said that it was a technique to divert the income

because Shri Vijay Kumar Aggarwal was also assessed at the highest tax rate.

After hearing the learned counsel for the parties we are of the considered view that no question of law much less a substantial question of law warranting admission of the appeal would arise because a categorical finding of fact has been recorded by the CIT(A) as well as by the Tribunal that the services rendered by Shri Vijay Kumar Aggarwal had not been doubted and the income received by him has been reflected which has been duly taxed. It has also been concluded that Shri Vijay Kumar Aggarwal has been assessee at the highest tax rate and the argument that it was a technique to divert the income has been rejected. In the face of the pure findings of fact the appeal does not warrant admission as no substantial question of law within the meaning of Section 260A(1) of the Act would arise for the determination of this Court.

In view of the above, the appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

13 .9.2007
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